IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 7501 of 2005

Between:

1. Y. Balraj Goud, S/o. Venkat Swamy, Aged 50 years,
R/o. H.No. 1-55, Boduppal, Ghatkesar Mandal,

Ranga Reddy District.
2 Y. Uma Maheswarai, W/o. Balraj Goud, Aged 45 years,
R/o. H.No. 1-55, Boduppal, Ghatkesar Mandal,

Ranga Reddy District.

..... PETITIONERS

AND

1 The District Collector, Ranga Reddy District.
2 The District Panchayat Officer,

Ranga Reddy District.
3 The Revenue Divisional Officer,

East Division, Hyderabad.
4 T. Laxmi, W/o. Jagaiah, Aged 35 years,
R/o. Boduppal, Ghatkesar Mandal,

Ranga Reddy District.
5 T. Jangaiah Yadav S/o. Yellaiah, II War Member,
R/o. Boduppal, Ghatkesar Mandal,

Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of Writ of Mandamus declaring the action of the respondents 1 to 3 not taking any action for disqualification of Respondents 4 and 5 under Sec. 19(3) of A.P. Panchayat Raj Act, 1994 as sarpanch and 2nd ward member of Bodupal Gram Panchayat, Ghatkesar Mandal, Ranga Reddy District and continuing 4th and 5th respondent as sarpanch and ward member of Boduppal Gram Panchayat, Ghatkesar Mandal, Ranga Reddy District, as arbitrary, illegal, unjust and contrary to the principles of the Act and pass such other order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: SMT.N.SHOBA

Counsel for the Respondent Nos.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court, at the stage of admission, made the following :

ORDER:

It is averred by the petitioners that the post of sarpanch for Boduppal Gram Panchayath was reserved for BC Mahilas, that elections to the 14 wards was held on 7.11.2002 and the respondents 4 and 5, who are wife and the husband, were elected as Sarpanch and 2nd ward member. The case of the petitioners is that the 4th and 5th respondents, were not qualified to contest for the election, inasmuch as they are disqualified under Sec. 19(3) of the A.P. Gram Panchayat Act, 1994, for having more than two children. It is stated that the third child was born on 10.9.1996 i.e. after 1995, which is the cut off date, prescribed under the enactment. It is further case of the petitioner that though he filed objection before the Revenue Divisional Officer on 30.10.2002, with regard to the disqualification criteria of the 4th and 5th respondent, it was rejected. Subsequently, the petitioners also filed representations dated 9.2.2005 and 30.3.2005.Therefore, aggrieved of the inaction on the part of the respondents, the petitioners, who are also husband and wife, preferred this writ

petition.

Though this writ petition is pending from 6.4.2005, no counter is filed.

The issue involved in the writ petition revolves round Sec. 22 of the Act. Therefore, it is apt to extract Sec. 22 which reads as under:

> ***Authority to decide the question of disqualifications of members:*** *(1) Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or author9ity to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made,. Or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner, shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, applied to the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.*
>
> *(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.*
>
> *(3)……..”*

Therefore, it is evident that the member and the Executive Authority, at the direction of the Gram Panchayat or the Commissioner, on the resolution of the Gram Panchayat, shall within a period of two months of such intimation or doubt, apply to the District Court having jurisdiction over the area. There is a procedure contemplated under Sec. 22 of the Act, which says that where an allegation is made that any person who is elected as a Member of a Gram Panchayat is not qualified or has become disqualified, the power is conferred on the District Court. As can be seen from the facts and circumstances of the case, there is no resolution passed by the Gram Panchayath, directing the Executive Authority to refer the matter to the District Court, which is the competent forum to adjudge the issue and to declare the disqualification or otherwise of the respondents 4 and 5. When the Gram Panchayath has not acted on the allegations, the

petitioners ought to have approached the Commissioner, who in turn would have directed the Executive Authority to refer the matter to the District Court, to take steps in accordance with Sec. 22 of the Act, in terms of the allegations made against the respondents 4 and 5. Thus this is a matter to be referred to the District Court, which is competent and having jurisdiction to conduct an enquiry with regard to the disqualification or incurring of disqualification by the 4th and 5th respondents. Therefore, the Gram Panchayath has not acted on the allegations made against the respondents 4 and 5, in terms of Sec. 22 of the Act. For this reason, the writ petition is liable to be dismissed and is accordingly dismissed. This order, however, does not preclude the petitioners from approaching the Commissioner or to take action under Sec. 22 of the Act.

Elipe Dharma Rao, J.

June 13, 2005

MAS.

To

1. The District Collector, Ranga Reddy District.
2 The District Panchayat Officer,

Ranga Reddy District.
3 The Revenue Divisional Officer,

East Division, Hyderabad

4 2 copies to the Govt. Pleader for Panchayat Raj and Rural

Development, A.P. High Court Building, Hyderabad.

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